

Assembly Bill No. 539

Passed the Assembly May 14, 2009

Chief Clerk of the Assembly

Passed the Senate July 9, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 8545.2, 8546, 8546.1, 8546.4, and 8547.7 of the Government Code, relating to the State Auditor.

LEGISLATIVE COUNSEL'S DIGEST

AB 539, Monning. State Auditor.

Existing law requires the State Auditor to establish an affirmative action program that meets the criteria and objectives established by the State Personnel Board.

This bill would instead require the State Auditor to establish an equal employment opportunity program that meets the criteria and objectives established by the State Personnel Board.

Existing law requires the State Auditor to complete any audit in a timely manner and in accordance with the "Government Auditing Standards" published by the Comptroller General of the United States. The State Auditor is required to transmit a copy of the audit report to the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, immediately upon completion of the audit. The commission is then required to deliver the report to the Legislature, appropriate committees or subcommittees of the Legislature, and the Governor, not later than 24 hours after delivery of the report to the commission.

This bill would instead require the State Auditor to deliver the report to the Legislature, appropriate committees or subcommittees of the Legislature, and the Governor, not later than 24 hours after delivery of the report to the commission.

Existing law requires the State Auditor to annually issue an auditor's report based upon the general purpose financial statements included in the Controller's annual report to the Governor. The State Auditor is authorized to examine all the financial records, accounts, and documents of any state agency, as defined, in the performance of this annual audit.

This bill would instead authorize the State Auditor to examine all the financial records, accounts, and documents of any state agency, as defined, in the performance of this annual audit and

any other audit or investigation undertaken by the Bureau of State Audits.

Under existing law, if the State Auditor submits a report of alleged improper activity to the head of an employing agency or appropriate appointing authority, that individual is required to report to the State Auditor with respect to any action taken by the individual regarding the activity. That individual is required to transmit the first report no later than 30 days after the date of the State Auditor's report, and to transmit monthly reports thereafter until final action has been taken.

This bill would instead require the head of the employing agency or appropriate appointing authority to transmit the first report to the State Auditor no later than 60 days after the date of the State Auditor's report.

The people of the State of California do enact as follows:

SECTION 1. Section 8545.2 of the Government Code is amended to read:

8545.2. (a) Notwithstanding any other provision of law, the State Auditor during regular business hours shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, and all other records, bank accounts, and money or other property, of any agency of the state, whether created by the California Constitution or otherwise, any local governmental entity, including any city, county, and school or special district, and any publicly created entity, for any audit or investigative audit. Any officer or employee of any agency or entity having these records or property in his or her possession, under his or her control, or otherwise having access to them, shall permit access to, and examination and reproduction thereof, upon the request of the State Auditor or his or her authorized representative.

(b) For the purposes of access to and examination and reproduction of the records and property described in subdivision (a), an authorized representative of the State Auditor is an employee or officer of the state or local governmental agency or publicly created entity involved and is subject to any limitations on release of the information as may apply to an employee or officer of the state or local governmental agency or publicly created entity. For

the purpose of conducting any audit or investigation, the State Auditor or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited or investigated to the same extent that employees or officers of that agency or public entity have access. No provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to subdivision (a), unless the provision specifically refers to and precludes access and examination and reproduction pursuant to subdivision (a). This subdivision does not apply to records compiled pursuant to Part 1 (commencing with Section 8900) or Part 2 (commencing with Section 10200) of Division 2.

(c) Any officer or person who fails or refuses to permit access and examination and reproduction, as required by this section, is guilty of a misdemeanor.

SEC. 2. Section 8546 of the Government Code is amended to read:

8546. It is the intent of the Legislature that the Bureau of State Audits have the independence necessary to conduct all of its audits in conformity with "Government Auditing Standards" published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants, free from influence of existing state control agencies that could be the subject of audits conducted by the bureau. Therefore, all of the following exclusions apply to the office:

(a) Notwithstanding Section 19790, the State Auditor shall establish an equal employment opportunity program that shall meet the criteria and objectives established by the State Personnel Board. The State Auditor shall report annually to the State Personnel Board and the commission regarding the program.

(b) Notwithstanding Section 12470, the State Auditor shall be responsible for maintaining its payroll system. In lieu of audits of the uniform payroll system performed by the Controller or any other department, the office shall contract pursuant to subdivision (e) of Section 8544.5 for an annual audit of its payroll and financial operations by an independent public accountant.

(c) Notwithstanding Section 13292, the State Auditor is delegated the authority to establish and administer the fiscal and administrative policies of the bureau in conformity with the State

Administrative Manual without oversight by the Department of Finance, the Department of Information Technology, or any other state agency.

(d) Notwithstanding Section 11032, the State Auditor may approve actual and necessary traveling expenses for travel outside the state for officers and employees of the bureau.

(e) Notwithstanding Section 11033, the State Auditor or officers and employees of the bureau may be absent from the state on business of the state upon approval of the State Auditor or Chief Deputy State Auditor.

(f) Sections 11040, 11042, and 11043 shall not apply to the Bureau of State Audits. The State Auditor may employ legal counsel under those terms that he or she deems necessary to conduct the legal business of, or render legal counsel to, the State Auditor.

(g) The provisions and definitions of Article 2 (commencing with Section 11342.510) of Chapter 3.5 of Division 3 shall not be construed to include the Bureau of State Audits. The State Auditor may adopt regulations necessary for the operation of the bureau pursuant to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3), but these regulations shall not be subject to the review or approval of the Office of Administrative Law.

(h) The State Auditor shall be exempt from all contract requirements of the Public Contract Code that require oversight, review, or approval by the Department of General Services or any other state agency. The State Auditor may contract on behalf of the State of California for goods and services that he or she deems necessary for the furtherance of the purposes of the bureau.

(i) (1) Subject to Article VII of the California Constitution, the State Auditor is delegated the authority to establish and administer the personnel policies and practices of the Bureau of State Audits in conformity with Part 2.6 (commencing with Section 19815) of Division 5 of Title 2 without oversight or approval by the Department of Personnel Administration.

(2) At the election of the State Auditor, officers and employees of the bureau may participate in benefits programs administered by the Department of Personnel Administration subject to the same conditions for participation that apply to civil service employees in other state agencies. For the purposes of benefits programs

administration only, the State Auditor is subject to the determinations of the department. The Bureau of State Audits shall reimburse the Department of Personnel Administration for the normal administrative costs incurred by the Department of Personnel Administration and for any extraordinary costs resulting from the inclusion of the bureau employees in these state benefit programs.

SEC. 3. Section 8546.1 of the Government Code is amended to read:

8546.1. (a) The State Auditor shall conduct financial and performance audits as directed by statute. The State Auditor may conduct these audits of any state agency as defined by Section 11000, whether created by the California Constitution or otherwise, any local governmental agency, including any city, county, and school or special district, or any publicly created entity. However, the State Auditor shall not audit the activities of the Milton Marks Commission on California State Government Organization and Economy or the Legislature to assure compliance with government auditing standards.

(b) The State Auditor shall conduct any audit of a state or local governmental agency or any other publicly created entity that is requested by the Joint Legislative Audit Committee to the extent that funding is available and in accordance with the priority established by the committee with respect to other audits requested by the committee. Members of the Legislature may submit requests for audits to the committee for its consideration and approval. Any audit request approved by the committee shall be forwarded to the State Auditor as a committee request.

(c) The State Auditor shall complete any audit in a timely manner and in accordance with the "Government Auditing Standards" published by the Comptroller General of the United States.

(d) Immediately upon completion of the audit, the State Auditor shall transmit a copy of the audit report to the commission. Not later than 24 hours after delivery to the commission, the State Auditor shall deliver the report to the Legislature, appropriate committees or subcommittees of the Legislature, and the Governor. Once transmitted to these parties, the report shall be made available to the public.

SEC. 4. Section 8546.4 of the Government Code is amended to read:

8546.4. (a) The State Auditor shall annually issue an auditor's report based upon the general purpose financial statements included in the Controller's annual report that is submitted to the Governor pursuant to Section 12460. The report shall be in accordance with the "Government Auditing Standards" published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants.

(b) The State Auditor, in the performance of this annual audit and any other audit or investigation undertaken by the bureau, may examine all the financial records, accounts, and documents of any state agency as defined by Section 11000.

(c) The State Auditor shall rely, to the maximum extent possible, upon the audits performed by the Controller, the Department of Finance, internal auditors of state agencies, and independent contractors. The Director of Finance shall be responsible for coordinating and providing technical assistance to the internal auditors of state agencies. Nothing in this article is intended to reduce or restrict the operations of internal auditors whose review of internal financial and administrative controls of state agencies is essential for coordinated audits.

(d) State agencies receiving federal funds shall be primarily responsible for arranging for federally required financial and compliance audits. State agencies shall immediately notify the Director of Finance, the State Auditor, and the Controller when they are required to obtain federally required financial and compliance audits. The Director of Finance, the State Auditor, and the Controller shall coordinate the procurement by state agencies, including any negotiations with cognizant federal agencies, of federally required financial and compliance audits.

(e) To prevent duplication of the annual audit conducted by the State Auditor pursuant to subdivision (a), except for those state agencies that are required by state law to obtain an annual audit, no state agency shall enter into a contract for a financial or compliance audit without prior written approval of the Controller and the Director of Finance, which approval shall state the reason for the contract and shall be filed with the State Auditor at least 30 days prior to the award of the contract. No funds appropriated

by the Legislature shall be encumbered for the purpose of funding any contract for an audit that duplicates the annual financial audit conducted by the State Auditor.

(f) Notwithstanding any other provision of this article, nothing in this section shall be construed to limit, restrict, or otherwise infringe upon the constitutional or statutory authority of the Controller to superintend the fiscal concerns of the state.

(g) Except as provided in subdivision (b), notwithstanding any other provision of this article, nothing in this section shall be construed to limit, restrict, or otherwise infringe upon the statutory authority of the Director of Finance to supervise the financial and business policies of the state.

SEC. 5. Section 8547.7 of the Government Code is amended to read:

8547.7. (a) If the State Auditor determines that there is reasonable cause to believe that an employee or state agency has engaged in any improper governmental activity, he or she shall report the nature and details of the activity to the head of the employing agency, or the appropriate appointing authority. If appropriate, the State Auditor shall report this information to the Attorney General, the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the State Auditor determines appropriate.

(b) The State Auditor shall not have any enforcement power. In any case in which the State Auditor submits a report of alleged improper activity to the head of the employing agency or appropriate appointing authority, that individual shall report to the State Auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than 60 days after the date of the State Auditor's report and monthly thereafter until final action has been taken.

(c) Every investigative audit shall be kept confidential, except that the State Auditor may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or release any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the state.

(d) This section shall not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

Approved _____, 2009

Governor